

Message Text

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C O N F I D E N T I A L TOKYO 13924

E.O. 11652: GDS

TAGS: PINT, JA

SUBJECT: CONSTITUTIONAL AUTHORITY OF PRIME MINISTER

REF: STATE 223770

BEGIN UNCLASSIFIED. SUMMARY. UNDER GOJ CONSTITUTION, ALTHOUGH CABINET MUST APPROVE DIET DISSOLUTION, PRIME MINISTER HAS SOLE RIGHT TO REPLACE OR TAKE PORTFOLIOS OF ANY CABINET MEMBERS OPPOSING DISSOLUTION. THUS HE HAS DE FACTO LEGAL POWER TO DISSOLVE DIET UNILATERALLY. JANUARY ELECTION COULD OCCUR IF DIET WERE IN SESSION AFTER NOVEMBER 9 AND ADJOURNED OR DISSOLVED AFTER DECEMBER 1, A PROSPECT WHICH NOW SEEMS UNLIKELY. END SUMMARY.

1. ARTICLE SEVEN OF GOJ CONSTITUTION PROVIDES THAT EMPEROR, WITH ADVICE AND APPROVAL OF CABINET, SHALL CONVOKE AND DISSOLVE DIET. ARTICLE 68 GIVES PRIMIN SOLE POWER TO APPOINT CABINET MEMBERS, PROVIDED MAJORITY ARE DIET MEMBERS. THUS, ALTHOUGH DIET DISSOLUTION REQUIRES FORMAL CABINET APPROVAL, PRIMIN COULD SIMPLY REPLACEM OBSTRUCTIONIST CABINET MEMBERS WITH THOSE SYMPATHETIC TO HIM (OR TAKE PORTFOLIOS HIMSELF) IF HE CHOOSES TO, THEREBY OBTAINING FORMAL CABINET APPROVAL OF DIET DISSOLUTION.

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2. AS FOR JANUARY LOWER HOUSE ELECTIONS, ARTICLE 31 OF

PUBLIC OFFICES ELECTION LAW PROVIDES THAT:

--GENERAL ELECTION REQUIRED BECAUSE OF EXPIRY OF LOWER HOUSE DIET MEMBERS' FOUR YEAR TERM (CONSTITUTION ART. 45) SHALL BE HELD DURING THIRTY-DAY PERIOD PRIOR TO TERM EXPIRY.

--HOWEVER, IN CASES WHERE DIET SESSION EXTENDS INTO THIS THIRTY-DAY PERIOD, ELECTION SHALL BE HELD BETWEEN 31ST AND 35 DAY FROM SESSION'S ADJOURNMENT. (AUTONOMY MINISTRY INFORMS US DIET MUST BE ADJOURNED BEFORE EXPIRATION OF MEMBERS' TERMS.)

--IF LOWER HOUSE DISSOLVED, ELECTION SHALL BE HELD WITHIN 40 DAYS OF DISSOLUTION.

--PUBLIC NOTIFICATION OF ELECTION DATE SHALL BE MADE AT LEAST 20 DAYS IN ADVANCE.

--IF DIET IS DISSOLVED AFTER NOTICE OF ELECTION IS GIVEN IN CONNECTION WITH EXPIRY OF DIET MEMBERS' TERMS, DISSOLUTION ELECTION PROCEDURES (I.E., ELECTION WITHIN 40 DAYS) TAKES PRECEDENCE.

3. IN PRESENT SITUATION, WHERE DIET MEMBERS' TERMS EXPIRE ON DECEMBER 9, AUTONOMY MINISTRY OFFICIALS TELL US THAT, UNLESS DIET IN SESSION DURING THIRTY-DAY PERIOD BEFORE THAT DATE, ELECTION MUST BE HELD ON OR BEFORE DECEMBER 8. (LEGAL CUSTOM HERE EXCLUDES DAY OF EXPIRATION FROM CALCULATION.) ELECTION NOTICE WOULD HAVE TO BE ISSUED BY NOVEMBER 18 TO PROVIDE 20-DAY CAMPAIGN PERIOD. IT IS UNDER THIS PROVISION THAT MANY HERE NOW EXPECT GENERAL ELECTION TO BE ANNOUNCED SOMETIME AFTER EMPEROR'S 50TH ANNIVERSARY OF ACCESSION CEREMONY NOVEMBER 10 AND BEFORE NOVEMBER 14 IN ORDER TO PROVIDE TWENTY-DAY ELECTION-CAMPAIGN PERIOD BEFORE DECEMBER 5, NOW COMMONLY ACCEPTED AS A LIKELY ELECTION DAY.

4. IF DIET WERE IN SESSION ON OR AFTER NOVEMBER 9 (THIRTY DAYS BEFORE MEMBERS' TERM EXPIRY), HOWEVER, ELECTION WOULD CONFIDENTIAL

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TAKE PLACE BETWEEN 31ST AND 35TH DAY AFTER DIET ADJOURNMENT. THUS, IF ADJOURNMENT CAME AFTER DECEMBER 1, ELECTION WOULD TAKE PLACE IN EARLY JANUARY. THERE IS, FINALLY, THEORETICAL POSSIBILITY OF DIET DISSOLUTION EVEN AFTER EXPIRY ANNOUNCEMENT OF GENERAL ELECTION. CONCEIVABLY THIS COULD RESULT IN ELECTION EVEN LATER IN JANUARY, I.E., WITHIN FORTY DAYS OF DISSOLUTION, BUT AUTONOMY MINISTRY TELLS US THIS COURSE VERY UNLIKELY.

END UNCLASSIFIED.

BEGIN CONFIDENTIAL.

5. WE ORIGINALLY MENTIONED POSSIBILITY OF JANUARY ELECTION
BECAUSE AT TIME WE WERE TOLD ON GOOD AUTHORITY THAT FUKUDA
LEANED TOWARD THIS COURSE IF HE BECAME PRIME
MINISTER. (HE NOW REPORTEDLY FAVORS DECEMBER 5 DATE.)
END CONFIDENTIAL.
HODGSON

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